

RESOLUTION NO. 3609

**JOINT RESOLUTION OF THE CITY COUNCIL AND LOCAL PUBLIC
CONTRACT REVIEW BOARD OPTING OUT OF THE ATTORNEY
GENERAL'S MODEL PUBLIC CONTRACTING RULES; ADOPTING
PUBLIC CONTRACTING RULES FOR THE CITY OF NEWPORT;
AND REPEALING EXISTING PUBLIC CONTRACTING RULES**

WHEREAS, it is the policy of the City of Newport (City) that a sound and responsive public contracting system should allow impartial, meaningful, and open competition, preserving formal competitive selection as the standard for public contracts unless otherwise specifically exempted herein, by state law, or by subsequent ordinance or resolutions; and

WHEREAS, the Oregon Legislature adopted HB 2341 (2003 Oregon Laws, Chapter 794), which was signed by the Governor, and had an operative date of March 1, 2005. This Act repealed Oregon Revised Statutes ("ORS") Chapter 279 (with minor exceptions) and replaced it with three new subchapters: ORS 279A, 279B, and 279C. These three subchapters, together, constitute the Public Contracting Code (or Code). All City rules and exemptions previously adopted under ORS chapter 279 expired on March 1, 2005; and

WHEREAS, absent any action by the Local Contract Review Board on or after March 1, 2005, the City would have operated under the Public Contracting Model Rules adopted by the Attorney General under ORS subchapters 279A, 279B, and 279C set forth in Oregon Administrative Rules Chapter 137, Divisions 46, 47, 48 and 49 (the "Model Rules"); and

WHEREAS, in order to adopt new public contracting rules that differ from the Model Rules, under ORS 279A.065(5), the City Council must specifically state that the Model Rules adopted by the Attorney General do not apply to the City, and prescribe its own public contracting rules, which may include portions of the Attorney General's Model Rules. The Local Contract Review Board may also adopt rules for public contracting not covered by the Model Rules, as long as they do not conflict with the Public Contracting Code; and

WHEREAS, the Public Contracting Code divides powers and duties for contracting into two categories: those that must be performed by the "Local Contract Review Board;" and those that must be performed by the "Contracting Agency;" and

WHEREAS, pursuant to ORS 279A.060 and Newport Municipal Code 2.30.010, the City Council is the Local Public Contract Review Board for City and, as such, is authorized to act on all such matters on behalf of the City, adopt Public Contracting Rules, and establish procedures for amendment of such rules; and

WHEREAS, the Local Contract Review Board may designate certain personal service contracts or classes of service contracts as personal service contracts, which are not subject to the procedural requirements of the Public Contracting Code or the Model Rules; and

WHEREAS, City recognizes it may exempt certain public improvement contracts or classes of such contracts under ORS 279C.335; and

WHEREAS, pursuant to ORS 279C.330 and 279C.335(2), the City Council submits the following findings supporting a class exemption of public improvement contracts from competitive bidding requirements, where a competitive proposal process is instead desired by City, in its sole discretion, which conforms to the requirements set forth in ORS 279C.400 through 279C.410:

- A. Operational, budget, and financial data. Where various criteria, which may or may not include cost, must be weighed in order to select an appropriate contractor for the desired project, the formal competitive bidding process costs of up to \$7,000 are a significant budgetary waste in that the most qualified contractor for the project may not be the lowest responsible bidder;
- B. Public benefits. Exempting contracts from competitive bidding requirements and instead utilizing statutory competitive proposal procedures will protect and preserve public funds, enable greater competition between the most qualified contractors, and result in a better product which meets the public's and City's needs;
- C. Value engineering, Specialized expertise required, Technical expertise. Only through a competitive proposal process can the City weigh, evaluate and select this type of expertise and determine which contractor may best provide these services. These are qualities not reflected in cost, where a determination on cost alone could forfeit these valuable and essential attributes;
- D. Public safety. Utilizing a competitive proposal process as opposed to competitive bidding can ensure high quality, more safely constructed facilities through the construction period, and after completion. Capitalizing upon design and construction planning and compatibility can also allow earlier use of public facilities even while construction continues;
- E. Market conditions. The increased availability of and need for technical expertise, value engineering, or other types of specialized expertise, as well as a need to investigate the compatibility, experience and availability of contractors require that certain public improvement contracts be awarded based upon an evaluation of a number of criteria, rather than simply cost; and

WHEREAS, the City Council additionally requests that the City's local contract review board approve the classes of special procurements and public improvement contract exemptions set forth in the attached rules, based upon the following findings:

- A. Any exemptions from competitive bidding requirements allowed under the following rules will not encourage favoritism in the awarding of public contracts nor substantially diminish competition for public contracts because such exemptions still require alternative contracting procedures which ensure: (1) reasonable competition; (2) the best contract price for the public; and (3) a cost-effective process for contractors;
- B. The awarding of public contracts pursuant to any such exemptions will result in substantial cost savings to the public contracting agency because the City will avoid costs associated with unnecessary documentation and procedures, where it is unmerited by the type and/or relatively low cost of the project; and
- C. The awarding of public contracts pursuant to any of the requested exemptions also substantially promotes the public interest in a manner that could not practicably be realized by formal competitive solicitation procedures, given the fact that such exemptions facilitate smooth operation of City's administration and operations, include procedures and mechanisms to ensure the best product, service or outcome is obtained at the least cost to the public and City, and the City's proposed Public Contracting Rules address areas of public contracting left unresolved by the Code and the Attorney General's Model Rules which are essential for City operations, such as the purchase of used personal property, and the disposition of surplus personal property;

The City of Newport resolves as follows:

- 1. The City Council is hereby designated to continue as the Local Contract Review Board of the City and shall have all of the rights, powers and authority necessary to carry out the provisions of Chapters 279A, 279B, and 279C (the "Public Contracting Code") and attached Rules. Except as otherwise provided in this Resolution, the definitions established in the attached Rules apply herein. The term "Contracting Agency" as used in the attached Rules includes Contracting Agency's chief administrative officer, his or her designee, or any other purchasing agent, as designated by City policy. Those individuals are hereby designated as City's Contracting Agency and may exercise all authorities, powers and duties granted to a Contracting Agency under the Public Contracting Code and attached Rules, unless otherwise established by City policy.
- 2. The above recitals are hereby adopted by the City Council, sitting as the Local Contract Review Board, as findings of fact supporting approval of the Council's request for classes of special procurement and public improvement contract exemptions.

3. The Model Rules adopted by the Attorney General pursuant to ORS 279A.065 do not apply to City. Instead, the City hereby prescribes the following Rules, which include portions of the Attorney General's Model Rules, as the Rules of Procedure that the City will use for its public contracting: Public Contracting Rules Chapter 137, Divisions 46, 47, 48 and 49. While the numbering of these Rules reflects the numbering system of the Attorney General's Model Rules, they incorporate City changes to the Model Rules, and, therefore, are not the Attorney General's promulgated administrative rules. City exemptions are also set forth in these Rules, as numbered Exemptions 1 through 18 (E-1 through E-18). All above-referenced Rules are attached to this Ordinance and incorporated herein by this reference.
4. In accordance with ORS 279A.065(5)(b), the City shall review its Public Contracting Rules, adopted herein, each time the Attorney General modifies its Model Rules in order to determine whether amendments are required to ensure statutory compliance.
5. Amendments to these Rules and new rules shall be adopted after a public hearing of the Public Contract Review Board. The subject matter of the amendment or new rule and hearing information, including date, time, and place of the hearing, shall be published in a newspaper of general circulation not less than three (3) nor more than fifteen (15) days prior to the date of the public hearing. Additionally, a notice of the hearing may be posted on the main entry door of the building where the meeting will be held not later than three (3) days prior to the date of the meeting.
6. Special procurement requests and approvals shall be made in accordance with Division 47 of the attached Rules and ORS 279B.085. Public improvement contract exemption procedures, including notice and public hearing requirements, shall be in accordance with Division 49 of the attached Rules and ORS 279C.335.
7. The Model Cost Accounting Guidelines developed by the Oregon Department of Administrative Services, pursuant to Section 3, Chapter 869, Oregon Laws 1979, are hereby adopted as the City's Cost Accounting System to apply to public improvement projects exceeding \$5,000 and constructed with City's own equipment or personnel. ORS 279C.310. For such public improvement projects estimated to cost more than \$125,000, City shall also comply with the requirements of ORS 279C.305(3).
8. All previously adopted Local Contract Review Board Rules, and adopting resolutions, including Resolutions 3437, 3451, and 3467, are hereby repealed in their entirety.

Adopted by the City Council on August 6, 2012.



Mark McConnell, Mayor



Mark McConnell, President
Local Public Contract Review Board

ATTEST:



Margaret M. Hawker, City Recorder
City Recorder

ATTEST:



Margaret M. Hawker, Secretary
Public Contract Review Board